

***NORTHWESTERN HAWAIIAN ISLANDS
CORAL REEF ECOSYSTEM RESERVE ADVISORY COUNCIL BRIEFING***

Thursday, October 7, 2004

8:30 a.m. – 12:00 noon

*Reserve Office Conference Room
6600 Kalaniana'ole Highway, Suite 300
Hawai'i Kai, O'ahu*

Draft Notes

ATTENDEES [Advisory Council Members]: William Aila (Native Hawaiian); Rick Hoo for Rick Gaffney (Recreational Fishing); Bill Gilmartin (Research); Gary Dill for Bobby Gomes (Commercial Fishing); Gail Grabowsky (Education); Cindy Hunter (Research); Tim Johns (State of Hawai'i); Kem Lowry (Citizen-at-Large); Lloyd Lowry (Marine Mammal Commission); Laura Thompson (Conservation); Don Palawski for Jerry Leinecke (U. S. Fish and Wildlife Service); 'Aulani Wilhelm (Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve); Naomi McIntosh, (Hawaiian Islands Humpback Whales National Marine Sanctuary).

Absent: Paul Achitoff (Conservation); RayArnaudo (Department of State); Philip Taylor (National Science Foundation); Kekuewa Kikiloi (Native Hawaiian); Michael Tosatto (Pacific Islands Regional Office); Kitty Simonds (Western Pacific Fishery Management Council); Dwight Mathers, CDR (U. S. Coast Guard); John Muraoka (Department of Defense); Linda Paul (Conservation); Birgit Winning (Ocean-Related Tourism).

[Alternate Council Members (not representing voting members)]: Athline Clark (State of Hawai'i).

[NWHI Staff]: Andy Collins; Emily Fielding; Malia Chow; Moani Pai; Mokihana Oliveira; Naomi Sodetani; Sean Corson.

[NMSP Staff]: Edward Lindelof; Allen Tom.

[Members of the Public]: Kitty Courtney, George Redpath; Jason Broadersen; Kevin Kelly (Tetra Tech); Cha Smith (KAHEA); Dave Raney (Sierra Club); Stephanie Fried (Environmental Defense); Bruce Caster (The Nature Conservancy); Troy Antonelis (State of Hawai'i); Kawehi Haug (Honolulu Weekly).

PURPOSE OF THE MEETING: To brief the Reserve Advisory Council (RAC/Council) on the document, "Proposed Northwestern Hawaiian Islands National Marine Sanctuary, Advice and Recommendations on Development of Draft Fishing Regulations Under the National Marine Sanctuaries Act, Section 304 (a)(5)", (Advice and Recommendations document), as approved by NOAA and submitted to the Western Pacific Fishery Management Council (WPFMC) on September 20, 2004.

I. OPENING/WELCOME

Chairperson Tim Johns called the meeting to order at 8:50 a.m. William Aila then offered the opening pule.

II. PRESENTATION ON THE ADVICE AND RECOMMENDATIONS DOCUMENT

‘Aulani Wilhelm stated that this presentation is designed to give more understanding of the Advice and Recommendations document as it concerns process and analyses, comparison of fishing alternatives, and comparison between the RAC’s fishing recommendation and the alternative identified as the most consistent with the goals and objectives. (A copy of this document was provided to all RAC members in advance of this briefing.)

Wilhelm commented that the analysis process was developed with Tetra Tech, Inc., the consultant firm hired to prepare an environmental impact statement (EIS) for the proposed NWHI national marine sanctuary. Wilhelm noted that Edward Lindelof would discuss the comparisons and Emily Fielding would present a review on the goals and objectives. Wilhelm then asked that questions be held towards the end of the presentation at which time staff will share with the RAC what the WPFMC is planning to do at its meeting on October 14, 2004.

Lindelof then led the on-screen review on process and development, showing slides on: designation purposes; summary of the National Marine Sanctuaries Act (NMSA) Section 304(a)(5); fishing regulations; schedule for 304(a)(5) review; sanctuary designation timeline, as it fits into the 304(a)(5) review; the 304(a)(5) Package, a pre-EIS, pre-decisional document, the analysis of which will aid in developing the range of alternatives which will be considered in the EIS and includes the goals and objectives which are final for the purpose of the 304(a)(5) process, and model regulations which would serve as guidance for WPFMC; guiding framework; agency and public involvement; inputs; (10) attachments to the 304(a)(5) package, consisting of: A – goals and objectives of the proposed sanctuary; B – model regulations; C – fishing alternatives analysis and associated zoning; and D – Resource and use statistics; and goals and objectives development.

A review of fishing alternatives was then presented by Wilhelm, consisting of fishing alternatives analysis; evaluation tools used in the analyses; an explanation on sanctuary preservation areas (SPA) and ecological reserves (ER); highlights of fishing alternative 3, including discussion on the opportunity for innovative ecosystem fishery management; the development of an ecosystem-based fishery management plan; focus on bottomfish; and comparisons between fishery alternatives 3 and 5.

Following this, Fielding gave a summary review of the Goals and Objectives (G&O) Comparison Table showing the RAC’s version of July 2004 as compared to the final version of September 2004. Fielding noted that the work process included working with

the RAC's advice to retain its intent and gain adoption of NOAA. (A copy of this document was distributed to the RAC at this briefing.).

In concluding the power point presentation, Wilhelm addressed the final slide entitled "What's Next?", by iterating that the Advice and Recommendations document initiates the 304(a)(5) process and that the document would not change. She further stated that the WPFMC is in its 120-day review period and has initiated its own process to determine how to respond, and would take action at its meeting on October 14, 2004. Wilhelm emphasized that the NWHI's focus is now on the continued development of the management plan and the DEIS. Questions from the floor followed.

III. QUESTIONS AND ANSWERS

Gail Grabowsky asked if there was information that Tetra Tech gathered, evaluated and used in selecting Alternative 3 which was not made available to the RAC. Kitty Courtney answered that what they were trying to get was resource data, as it would be difficult to move forward without it. As a result, they were able to put together and use resource maps as included in the Advice and Recommendations document. All of the data that was used was made available to the RAC.

Lloyd Lowry queried what the implications would be if fishing alternative evaluations differed substantially. Lindelof answered that NOAA strongly supports Alternative 3 and the G&Os. He noted that there can be some differences within the framework and stated that things can change resulting from the EIS public review process.

Referring to Table 11, "Results of Screening Fishing Alternatives" in the Advice and Recommendations document, Kem Lowry asked how subjective the rating process was for each of the fishing alternatives, and would the RAC have come up with the same ratings if members were at the table. Courtney stated that the process began with screening criteria that was intended to ask a series of questions regarding the purposes and policies of the NMSA and the proposed sanctuary goals. In understanding how the criteria was developed, Courtney rhetorically asked if a different question could have been written, and the answer to that would be "yes." Courtney iterated that assigning the scoring, -1=negative response, 1 = neutral response, +1= positive response, followed the criteria. Having looked at the available data, assigning a score accordingly, and trying to capture several layers of rationale allowed an overall answer. Again, rhetorically, could one have answered differently, and the answer to that would be "yes". It was an overall process that was done through various levels with provided rationale and did not go beyond the program. Courtney added that while the various pieces could have been critiqued, the bottom line consideration was the question, "Is it reasonable?"

Tim Johns stated that two alternatives, WPFMC and the Executive Orders (EO) were negatively ranked and noted that the EO should be higher ranked since it intended to put a protection scheme in place that was not there before. Courtney responded that while it did surprise Tetra Tech as well, the task was to review a set of goals and objectives for a sanctuary rather than a reserve.

Don Palawski asked if a technical error were found and needed to be resolved how should WPFMC be informed during its 120-day review period. Lindelof replied that the information should be sent to the NWHI Reserve office with a copy to WPFMC.

Kem Lowry stated that there is a danger in viewing the comparisons so as not to invite undue attention to the different criteria should it be weighed differently. Johns stated that if this method were chosen it would change the paradigm as to how federal agencies make decisions. Wilhelm stated that a methodology had to be developed and reviewed by NOAA in order to move forward. This afforded the agency an understanding that the homework was done.

Cindy Hunter asked what the difference is between lobster habitat and shallow water coral reef habitat. Courtney responded that according to the shallow water atlas the lobster habitat is 35 fathoms and the shallow water coral reef habitat is 30 fathoms.

Discussion ensued on the parameters used for resource assessment of the NWHI as shown in tables and resource maps on-screen and in the Advice and Recommendations document, resulting in a better understanding of percentages within take and no-take zones.

Inquiring on screening criteria noted in Table 11, "Results of Screening Fishing Alternatives", Grabowsky asked if the monk seal foraging area is meant to be an area which NOAA would accept as a "no-take" area. Wilhelm noted that it would be weighed during the public EIS process, at which time the need for more interpretation of monk seal foraging and compatible and non-compatible areas would be reviewed. Johns asked if this protects the critical habitat for monk seals and endangered species. Gilmartin noted that there is almost no information as to what monk seals do. Johns pointed out that while fishing regulations are being proposed in a sanctuary, it has not been shown that endangered species such as monk seals are being protected, bound by the Endangered Species Act. Courtney noted that it would be an important point in the NEPA analysis. Hunter noted that she would like to see more of this factored in the EIS and asked how this might be an improvement on what the State of Hawaii (SOH) and U. S. Fish and Wildlife Service (USFWS) are doing in terms of protection. Wilhelm noted that the SOH has recommended "no harvest" with the exception of Nihoa. Lindelof stated the longitude and latitude coordinates of the zone means that it will be easier to enforce providing the sanctuary with a higher level of protection. Wilhelm noted that there are latitude and longitude coordinate boundaries on those areas, with one difference being Midway, where a new "no take" protection area beyond what currently exists with FWS is included. Palawski noted that FWS and the Department of the Interior could turn Midway into a 12-mile area.

Gilmartin asked why the preservation areas at Gardner Pinnacles and Necker were thrown out as noted in Lindelof's presentation on Alternative 3, to which Wilhelm replied that it was pushed out to 75 fathoms. Lindelof noted that the expansion of the spatial analysis for French Frigate Shoals took about 25 percent of the bottomfish area and that

both Gardner Pinnacles and Necker together were slightly more than that in terms of potential bottomfish take and lower ecological values resulting in a basic trade-off.

Johns called for further questions and comments. Hunter noted staff did a great job and that the insertion of the word “global”, was laudable. staff did a great job. Lindelof noted that when doing briefings in D. C., an explanation had to be given as to where the NWHI would fit in that context. Gilmartin asked if the Council comes back with a recommendation allowing recreational fishing with no caps would it be acceptable? Wilhelm stated that it would have to be in the aggregate when it goes back to the Secretary. Lindelof noted that it would be processed through the analyses to see if it made sense. Gilmartin asked if the reserve/sanctuary is satisfied, to which Wilhelm responded in the negative, stating that “accepted” means accepted as a draft, and that the WPFMC gets first review, further noting that its unknown as to what the WPFMC is going to come out with. Final outcomes will be in the EIS, where comparison of alternatives will be seen. A brief discussion on goals and objectives was held. Johns expressed his concern that stated language could lead to an increase in recreational fishing, to which Wilhelm stated that the goals and objectives noted are those which have been cleared by NOAA, and that levels of specificity would be addressed at the management plan level.

With no further comments, Johns called for a 15-minute break. Upon reassembly at 11:30 a.m. Wilhelm addressed the RAC concerning the WPFMC. Public Comment followed this address.

Wilhelm informed the RAC that the WPFMC released its own package two days prior to distribution of the Advice and Recommendations document. This document is entitled, “Fishery Management Measures for the Proposed Northwestern Hawaiian Islands National Marine Sanctuary”, dated September 18, 2004, and it was sent to the Reserve’s Hilo Office. WPFMC’s report included all six fishery management plans, three of which have four amendments, and two of which have two amendments. It appeared that the preferred alternatives they are moving toward are similar to the FMP provisions for the NWHI plus items that have been disapproved by NOAA.

Comments from the floor included that action be taken in the form of a letter or recommendation to Dan Basta or Admiral Conrad Lautenbacher. It was noted that the Council process is a two-step process and that the WPFMC would not take action until its next meeting. The Scientific and Statistical Committee would review the difference between the goals and objectives that the WPFMC will vote on. Its rendition of the goals and objectives of the NWHI is not accurate. They have reordered and made changes to them. WPFMC meetings are scheduled on October 12 – 15, 2004. Reserve staff will be in attendance. Public comment can be made on October 14.

A summary white paper was distributed and CD copies were made available to the RAC.

Gilmartin stated that the route being taken for goals and objectives is outside of the usual process, to which Lindelof commented that there was no parallel process. What was

given would be put into the EIS, along with consistent regulations. Lindelof further noted that the time to make changes would be at public comment for the DEIS.

IV. PUBLIC COMMENT

The chair recognized Cha Smith of KAHEA, Stephanie Fried of Environmental Defense, and Dave Raney of the Sierra Club.

Smith expressed her concern of NOS and its role in the development of the EIS, that there is clearly a disconnect between what they are seeing in the law and the public input, whereby both have been thrown out while claiming that they are protecting the resource. She noted that there are interpretations of some of the data that is new, whereby the outcome is something that everyone is supposed to live with and stated that the process is supposed to be protecting the NWHI. Smith stated that consultation between the RAC and the EIS contractor needs to happen now and not during the comment period when it is done. She considered this to be an insult and further expressed that the RAC, as well as the non-government organizations (NGOs), need to be consulted in the development of the management plan. Smith stated that the changes made by NOAA on the goals and objectives are not minor ones and eliminate the EO and public input. Her encouragement to the RAC is that there be an errata document in the EIS that addresses inconsistencies in their recommendations. Smith acknowledged that there are a lot of good and important analyses. In conclusion, she encouraged the RAC to provide a formal response at some point, preferably at the next RAC meeting.

Dave Raney acknowledged the hard work that was rendered and stated his recognizing the error of misplaced decisions. He noted that there is a degree of uncertainty that provides this framework. While it is a useful framework the problem is that it is now in a CD that cannot be modified at this point. Raney expressed his concerns regarding impacts on socio-economics which he feels have not been sufficiently factored into these processes. Raney asked if the assertion of Alternative 3 is consistent and complies with the EO, even though there are some areas that are actually reduced in terms of overall supply. He stated that it is difficult being a Reserve Council as well as a designation body, and having the implementation of the Reserve lagging behind. Raney explained that years ago there was the assertion that the EO were self-implementing and that regulations were not required, commenting that now it bothered him to hear of a sanctuary in 2006 with regulations, and rhetorically asked, "what about 2005?" He expressed his concern about implementing the EO itself, and while commenting on the point of "complement or supplement", stating that it is the position of Commerce that they need to do so.

Raney further noted that specific items could change if it needs to be more protective than what the EO provides, and that given the various areas, it does have to do with the issue of regulations. Explaining that executing regulations require enforcement action, it is not as enforceable as a site with regulations, noting further that a penalty schedule based on self-executing provisions could not be done, but that a penalty schedule based on regulations could. Raney stated that the question is whether or not regulations are

needed to enforce, pointing out that the Coast Guard is more comfortable with regulations. He also noted that the scoring for Alternative 1 was higher than status quo.

Comments by Stephanie Fried followed. She underscored the fact that at this moment the role of the RAC is more important than ever and thanked Lindelof for clarifying that goals and objectives are not final for the DEIS. She considered it very important for the RAC to weigh in on what proper alternatives and goals and objectives should be. Regarding the scoring methodology, she felt that NOS or the agency that issues the document should issue an errata sheet if there are errors, stating that one of the overarching issues is how the scoring was done. Fried stated that Table 11 illustrates the absolute disconnect with public comment and noted that it would be a big problem if the sanctuary had a total disconnect between the sanctuary and the EO. Fried suggested that this is a tremendous problem in terms of moving forward for the sanctuary and stated that the big question about status quo is referred to in different ways. Without implementation and regulations, status quo loses points due to the lack of regulations. She said that the status quo has a decrease in bottomfish catch and expressed difficulty in understanding how a status quo could cause a decrease in anything.

Following public comment, Johns inquired on the agenda for the RAC meeting scheduled on October 20-21, 2004. Wilhelm responded that action will be taken with the RAC leadership team. Focus on the management plans would be a component of day one. Two days have been scheduled depending on actions to be taken at the WPFMC meeting.

There being no further discussion, the meeting was adjourned at 12:00 noon.